IN THE

Supreme Court of the United States

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No.

BROTHERHOOD OF RAILROAD TRAINMEN, ET AL.,
Petitioners

v.

THE DENVER & RIO GRANDE WESTERN RAILROAD COMPANY, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Petitioners, the Brotherhood of Railroad Trainmen, Local Lodges, Nos. 31, 32, 349, 401 and 446 of the Brotherhood, and Messrs. B. E. Roark, H. G. Thayne, W. C. Chandler, Carl F. Ahrens, N. E. Doolittle, M. C. Feather, and R. E. Carroll, officers of local units of the Brotherhood, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit, entered in the above-entitled case on April 13, 1961.

OPINIONS BELOW

The opinion of the District Court, printed in Appendix B hereto, *infra*, p. 6a, is reported in 185 F.

Supp. 369. The opinion of the Court of Appeals, printed in Appendix C hereto, *infra*, p. 15a, is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on April 13, 1961. (Appendix C, *infra*, p. 22a). The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

QUESTIONS PRESENTED

In the opinion of the petitioners, the following questions are presented by this petition:

1. Whether the Railway Labor Act deprives railroad employees of their common law right to strike against their employer railroad to obtain compliance with their contracts and redress for violations of such contracts by the railroad in a situation where the employees have submitted the dispute concerning interpretation of the contracts to the National Railroad Adjustment Board and that Board has rendered a decision in favor of the employees which the railroad refuses to honor?

2. Whether Section 4 of the Norris-LaGuardia Act prohibits a Federal Court from enjoining a strike of railroad employees against their employing railroad in the circumstances stated in paragraph 1 above?

3. Whether Section 8 of the Norris-LaGuardia Act prohibits a Federal Court from enjoining a strike of railroad employees against their employing railroad in the circumstances stated in paragraph 1 above?

4. Whether Section 8 of the Norris-LaGuardia Act prohibits a Federal Court from enjoining a strike of

railroad employees against their employing railroad in the circumstances stated in paragraph 1 above and in the further circumstance that such railroad has also failed to make every reasonable effort to settle such dispute by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration?

STATUTES INVOLVED

The statutory provisions involved are Section 3 of the Railway Labor Act (45 U.S.C. Section 153) and Sections 4, 8 and 13 of the Norris-LaGuardia Act (29 U.S.C. Section 104, 108 and 113). They are printed in Appendix A, *infra*, p. 1a.[1]

STATEMENT

This case involves the interpretation and application of the Railway Labor Act (45 U.S.C. Sections 151 et seq.) and the Norris-LaGuardia Act (29 U.S.C. Sections 100 et seq.) to a threatened strike called by the Brotherhood in a situation where the National Railroad Adjustment Board found the respondent railroad to be in violation of its collective bargaining agreements covering employees represented by the Brotherhood, had entered orders sustaining the claims

[1] The complaint (R. 10) also cites the Interstate Commerce Act. Neither the District Court nor the Court of Appeals makes any mention of this statute and in the opinion of petitioners the provisions thereof have no bearing on the present case. The complaint (R. 9) also cites Sections 1a and 2 of the Railway Labor Act (45 U.S.C. Sections 151a and 152). The District Court does not cite any of these statutory provisions. The Court of Appeals does cite Section 1a which sets forth the general purposes of the Railway Labor Act. In the opinion of petitioners, these statutory provisions, which simply indicate the general purposes of the statute that employees and carriers should settle their disputes, are not controlling on the issues here involved.

of individual employees for one day's pay for certain specified dates on which such violations had occurred, and the respondent railroad had refused to honor the Adjustment Board decisions. The District Court held (1) that the threatened strike in such circumstances violated the provisions of the Railway Labor Act, because petitioners were required by that statute to seek redress for the contract violations only by judicial action in the Federal courts, and (2) that the District Court was not prohibited by the Norris-LaGuardia Act from enjoining the resort to self-help. (R. 30, 31). The Court of Appeals affirmed this decision. (Appendix C, *infra*, p. 22a).

The disputes which gave rise to this case arose under two separate collective bargaining agreements governing the terms and conditions of employment of employees of the respondent railroad represented by the Brotherhood.

The first dispute concerned provisions of the agreement dated February 1, 1952, between the Brotherhood and the respondent railroad and involved the right of the railroad under said agreement to inaugurate new runs or cancel old ones without notice to and negotiation with its employees covered by the agreement. (R. 6, 13). On March 6, 1952, the respondent railroad notified the Brotherhood of the carrier's intention to cancel its Provo-Eureka run, which was written into the agreement between the parties, and to install a new assignment. The Brotherhood protested but the carrier nevertheless carried out the cancellation of the old run and installation of the new run. (R. 13).

The second dispute between the Brotherhood and the respondent railroad concerned the question of whether

or not the railroad had the right under an agreement dated June 1, 1950, between the carrier and the Order of Railway Conductors and Brakemen, which governed rates of pay, rules, and working conditions, of brakemen represented by the Brotherhood, to require head brakemen to herd engines from in-bound trains to its tie-up track in the carrier's north yard at Denver. (R. 6, 15). The dispute arose out of the claims of certain conductors that the railroad violated the provisions of the collective bargaining agreement in question by requiring them to herd engines on various dates in August 1952. (R. 15).

Neither of the two disputes were settled by conferences between the Brotherhood and the railroad so that the Brotherhood on or about February 5, 1953, submitted the disputes to the First Division of the National Railroad Adjustment Board (R. 6) pursuant to the provisions of Section 3, First, (i) of the Railway Labor Act (45 U.S.C. Section 153, First, (i))[2]. Thereafter, the First Division of the Adjustment Board heard the disputes and on December 17, 1959, and January 20, 1960, handed down its decisions sustaining the claims of the Brotherhood. These decisions were in the form of awards and orders (R. 12-19) as provided by Sections 3, First, (m) (n) and (o) of the Railway Labor Act.

The award in the dispute concerning the right of the railroad to cancel the Provo-Eureka run without notice to and negotitaion with the Brotherhood (No. 19372) was based on the ground that in a series of some twelve awards the Division had ruled that the respond-

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[2] This Section is set forth in full in Appendix A hereto, *infra*, p. 1a.

ent railroad had yielded the right in its collective bargaining agreement to inaugurate new runs or cancel old ones without notice to and negotiation with the employees and that in negotiating for a change in such provisions of the agreement the carrier had attempted to and had not succeeded in obtaining an amendment permitting it to discontinue or rearrange old assignments. (R. 13, 14) The Division accompanied its award with an order to the carrier that the award was to be effective on or before January 17, 1960. (R. 15).

In the Adjustment Board proceedings resulting in Award No. 19389 (R. 15), the railroad relied upon the action of a Special Adjustment Board on the property denying a similar claim in 1952. The Adjustment Board rejected this argument with the following finding: (R. 15-17)

> "Virtually identical issues involving these parties, arising at the same point on carrier's system, have been passed upon numerous times heretofore by the parties themselves in voluntary settlements of claims between them, by this Division, by an Emergency Board, and by a Special Board on the property.
>
> * * * * *
>
> "However, Special Adjustment Board No. 12 on the property, denied a claim on June 23, 1952, and carrier naturally relies heavily upon this, pointing out the serious consideration that a different ruling in the instant case might penalize it even though it was in compliance with an award of an authorized tribunal, and was operating in accordance with such award. Nevertheless, it was inescapable that prior to the Special Board's decision there was unusual unanimity of precedent with respect to these same parties on the same issue at virtually the same point on the road."

he Board also pointed out (R. 17) that the 1952 pecial Board did not have before it this history and ckground of the contract issue involved. The Divi- on also accompanied this award with an order direct- g the carrier to comply therewith on or before Febru- y 20, 1961. (R. 18-19).

Both Board awards were decisions of a Neutral eferee since the carrier members of the Board dis- nted.

After the Adjustment Board handed down Award o. 19372, a representative of the Brotherhood met ith representatives of the railroad on four different casions in January 1960, concerning the carrier's mpliance with the awards and orders of the Adjust- ent Board. At that time the representative of the ilroad stated that payment of the award would be ade or report thereon worked up through the Salt ake City office of the railroad. Nothing was said at ese meetings concerning any carrier refusal to honor e award. (R. 41, 42). Thereafter, the representa- ve of the Brotherhood met with representatives of e railroad, at their request, in the railroad offices on ebruary 12, 1960, to discuss both Award No. 19372 d Award No. 19389 which had been handed down hile discussions were taking place concerning the rlier award. The railroad representatives informed e representative of the Brotherhood that they had en instructed to notify the Brotherhood that the rrier was not going to accept the awards until the otherhood secured an order from the United States istrict Court. (R. 42).

A subsequent meeting was held on March 3, 1960, tween representatives of the Brotherhood and repre-

sentatives of the railroad at which the carrier again reiterated that it would not honor the awards until it received an order from a court. (R. 42, 43). At neither of these meetings, nor at any other time, did the railroad attempt to negotiate a settlement of the awards nor did it propose a compromise of any sort with respect thereto. (R. 43). It has since ceased the practice involved in Award No. 19389 of using head brakemen to herd engines in its north yard at Denver, which was found by the First Division of the National Railroad Adjustment Board to be in violation of the collective bargaining agreement, but it has not paid the head brakemen involved the one day's pay to which they were held entitled by the Board for being required to herd engines in violation of the agreement. (R. 7, 43). The carrier has not restored the Provo-Eureka run which the First Division of the Adjustment Board held it had cancelled in violation of the collective bargaining agreement in Award No. 19372 (R. 44) nor has it paid to the brakemen involved the day's pay to which the First Division held them entitled for the violation of the agreement. (R. 7).

As a result of the carrier's refusal to honor the awards, the Brotherhood served a notice upon the railroad that the employees of the carrier represented by it would withdraw their services on April 15, 1960. (R. 8). Whereupon, the National Mediation Board proffered its emergency services, which were accepted by the Brotherhood, and the threatened strike was postponed pending mediation. (R. 8). On May 13, 1960, the National Mediation Board notified representatives of the Brotherhood and the railroad that further mediation efforts were not warranted and that the Board was closing its file on

the case. Upon receipt of this notice, the Brotherhood notified the carrier that the employees represented by the Brotherhood would withdraw their services on May 16, 1960. (R. 44).

On May 16, 1960, the respondent railroad filed its complaint in the District Court asking for a temporary restraining order, a preliminary injunction, and a permanent injunction against the threatened strike. (R. 3-12). There was attached to this complaint copies of the awards and orders of the First Division of the National Railroad Adjustment Board involved. (R. 12-19).

Paragraph 11 of the complaint alleged that the threatened strike was in violation of the provisions of Section 3, First, (p) of the the Railway Labor Act which was alleged to require the Brotherhood to file a suit in an appropriate United States District Court to obtain judicial relief from the carrier's refusal to honor the awards and orders of the First Division of the National Railroad Adjustment Board and thus prohibited the Brotherhood from conducting a strike following such refusal. (R. 7-9). Paragraph 12 of the complaint set forth the provisions of Section 1a of the Railway Labor Act (45 U.S.C. Section 151a), which contain the general purposes of the statute. These include avoidance of interruptions to interstate commerce or the operations of carriers engaged therein and the prompt and orderly settlement of disputes growing out of the interpretation or application of collective bargaining agreements. This paragraph of the complaint also sets forth the provisions of Section 2, First, of the statute (45 U.S.C. Section 152, First) which make it the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make

and maintain collective bargaining agreements and to settle all disputes arising out of the application of such agreements. Such paragraph did not allege in terms that the threatened strike violated the cited provisions of the statute, although it did state that the railroad was threatened by an unlawful strike notwithstanding these policy provisions. (R. 9).

The District Court issued an *ex parte* restraining order on May 16, 1960, and the threatened strike was halted a short time after the hour for it to begin. Thereafter, on May 26, 1960, a preliminary injunction was issued which continued in effect until a hearing on the railroad's petition for permanent injunctive relief. (R. 29).

On June 22, 1960, the petitioners filed their Answer to the Complaint. (R. 19-24). This answer admitted the material facts alleged in the complaint of which the petitioners had knowledge, with a few minor exceptions, but denied that the threatened strike involved any violation of the Railway Labor Act. In addition, the petitioners, in paragraph 24 of the answer, pleaded that the provisions of the Norris-LaGuardia Act (29 U.S.C. 101 et Seq.) took away any jurisdiction which the District Court might otherwise have to enjoin the threatened strike. (R. 24).

Following a trial which involved no dispute as to material fact but only as to the law (R. 34-44) the District Court on July 27, 1960, entered its Memorandum Opinion holding that the threatened strike violated the Railway Labor Act and that the Court was not prohibited by the Norris-LaGuardia Act from granting injunctive relief. (Appendix B, *infra*, p. 6a). Thereafter, on August 10, 1960, the District Court entered its Findings of Fact and Conclusions of Law and its final

judgment and decree enjoining the petitioners from conducting the threatened strike. (R. 26-32). The judgment of the Court of Appeals for which review is sought by this petition affirmed the judgment and decree of the District Court. (Appendix C, *infra*, p. 22a) It did so upon the basic ground that the procedures of Section 3 of the Railway Labor Act are a complete substitute for the right to strike. The Court of Appeals further held that the Norris-LaGuardia Act, including Section 8 thereof, did not bar injunctive relief citing primarily *Brotherhood of Railroad Trainmen* v. *Chicago River & Indiana Railroad Company*, 353 U.S. 30 (1957) for this conclusion. (Appendix C, *infra*, p. 15a)

REASONS FOR GRANTING THE WRIT

1. The Questions Presented By This Petition Are Clearly of Importance in the Administration of the Railway Labor Act and the Norris-LaGuardia Act

a. Railway Labor Act

In *Brotherhood of Railroad Trainmen* v. *Chicago River & Indiana Railroad Company*, 353 U.S. 30 (1957) this Court stated as follows its reason for considering and deciding the question of whether a railway labor organization can resort to a strike over matters pending before the National Railroad Adjustment Board: (page 33)[3]

> "We granted certiorari in order to resolve an important question concerning interpretation and application of the Railway Labor Act."

The decision of the court below in the present case goes far beyond the problem involved in the *Chicago*

[3] In footnote 3 at page 33 the Court also noted that in addition to the importance of the question, there was a conflict in the decisions of the Courts of Appeals for the Fifth and Seventh Circuits.

River case and holds that the Railway Labor Act forbids a railway labor organization from resorting to a strike over contract violations by a railroad even though the organization has submitted the matter to the National Railroad Adjustment Board, that Board has determined that the railroad is violating the contracts involved and the railroad has refused to abide by the Board's decision. Thus, the judgment of the Court of Appeals presents questions which are of even greater importance in the administration of the Railway Labor Act than those considered by this Court in the *Chicago River* case.

The effect of the Court of Appeals decision upon the application of the Railway Labor Act is also so far-reaching that it should not be permitted to stand without review by this Court.

First: the decision below is premised upon the proposition that there can be no strike under any circumstances with respect to matters covered by Section 3 of the Railway Labor Act. Such proposition, which takes away completely the employees' common law right to strike with respect to these matters, involves a drastic interpretation of the Railway Labor Act entirely by implication and without the benefit of any express prohibition in the statute.

Second: the Court of Appeals decision completely destroys the intent of Section 3 as set forth by this Court in the following statement in the *Chicago River* case: (353 U.S. 34)[1]

[1] Any suggestion that this statement might be inapplicable to the present case because money awards are involved is refuted by the fact that nineteen of the twenty-one grievances giving rise to the disputes in the *Chicago River* case "were claims for additional compensation" (353 U.S. 32).

> "Section 3, First (m), declares that—'The awards of the several divisions of the Adjustment Board * * * shall be final and binding upon both parties to the dispute * * *'
>
> "This language is unequivocal. Congress has set up a tribunal to handle minor disputes which have not been resolved by the parties themselves. *Awards of this Board are 'final and binding upon both parties'.*" (Emphasis supplied)

The decision below has the effect of making Adjustment Board awards binding only on employees, rather than on both parties as this Court specifically stated is the statutory intent.

Third: the Court of Appeals decision undermines the basic purpose of Section 3 to obtain final and binding determinations by the Adjustment Board in matters under the Board's jurisdiction as such decision eliminates any incentive by railroads to abide by Board awards. The only risk which a railroad incurs under the decision below by refusing to honor an Adjustment Board award is the cost of further litigation which is no risk at all.

b. Norris-LaGuardia Act

The decision of the Court of Appeals upholds the use of injunctive power by the Federal courts against conduct which Section 4 of the Norris-LaGuardia Act (29 U.S.C. Section 104) has withdrawn from the injunctive power of such courts. The only case in which this Court has heretofore permitted the use of the injunctive power of the Federal courts against this type of conduct is in the *Chicago River* case where the injunction was used to preserve the jurisdiction of the Adjustment Board to decide matters pending before it.

The question of whether the federal injunctive power should be further extended to enjoin conduct which Section 4 of the Norris-LaGuardia Act has withdrawn from the authority of the Federal courts in a situation where the jurisdiction of the Adjustment Board has been exhausted and that Board has decided in favor of the employees presents a matter of substantial importance in the administration of that statute.

Moreover, the injunctive relief in the *Chicago River* case was granted to a railroad which had done all in its power to settle the dispute by submitting it to the Adjustment Board for decision. In the present case the beneficiary of the injunctive relief is a carrier which has refused to abide by Adjustment Board decisions and which has made no effort to settle the dispute but has instead stood upon a bare claimed legal right to force the employees through a further period of extended litigation. This situation gives rise to important questions concerning the proper interpretation and application of Section 8 of the Norris-LaGuardia Act which provides that no injunctive relief shall be granted to any complainant who has failed to make every reasonable effort to settle its labor disputes either by negotiation or with the aid of any governmental machinery or voluntary arbitration. Assuming *arguendo* that the respondent has, as it asserts, a legal right to refuse to abide by Adjustment Board decisions involved in the present case, the important problem is still present as to whether under such circumstances it has met the requirements of Section 8 for injunctive relief. Finally, even if the answer to this question is "yes", the further important question is presented as to whether respondent has met such requirements in a situation where it not only refused to abide

by the Adjustment Board decisions but made no effort to negotiate a settlement of the dispute with the Brotherhood prior to filing the injunction suit.

Both the District Court (Appendix B, *infra*, p. 13a) and the Court of Appeals (Appendix C, *infra*, p 21a) held Section 8 did not bar injunctive relief, relying principally on the *Chicago River* decision. Their judgments in substance limit Section 8 to a compliance only with legal requirements. It is submitted that the application of Section 8 to the present situation raises important questions not disposed of by the *Chicago River* case.

2. The Decision of the Court of Appeals is Directly in Conflict With Decisions of This Court Concerning the Application of the Railway Labor Act and the Norris-LaGuardia Act

a Railway Labor Act

The Court of Appeals, in rejecting the position of the employees that they were free to strike after having submitted the dispute to the National Railroad Adjustment Board and obtained favorable decisions which the respondent refused to honor, stated as follows: (Appendix C, *infra*, p. 20a)

> "With these contentions we cannot agree. We think that the rationale of the Supreme Court decisions is to the effect that the statutory proceedings before the Board in minor disputes provide an *appropriate and fair substitute for the right to strike*, and that the district court action provided in Section 3, First (p) of the Act is the enforcement procedure in the compulsory arbitration machinery adopted by Congress in the 1934 amendment." (Emphasis supplied)

The premise of the court below that Section 3 completely takes away the employees' right to strike over matters covered by such section is in direct conflict

with the decision of this Court in *Manion* v. *Kansas City Terminal Railway Company*, 353 U.S. 927 (1957) in which the Court vacated a lower court judgment enjoining a strike by a railway labor organization over grievances subject to Section 3, which had been processed through the property as required by that section, but were not pending before the National Railroad Adjustment Board. It is thus clear that there is some right to strike over matters covered by Section 3 and that the procedures of the section are not a complete substitute for the right to strike in any and all circumstances. Neither the Court of Appeals decision or that of the District Court refers to the *Manion* case, although they are clearly inconsistent with such decision and its application to the present situation was briefed and argued extensively by both petitioners and respondent to both courts. Moreover it is a companion case to the *Chicago River* decision upon which both courts principally rely.

The Court of Appeals decision also erroneously accepts the respondent's argument that this Court in the *Chicago River* case held that employees were compelled by the language of Section 3, First (i) to submit their grievances and disputes concerning the interpretation or application of collective bargaining agreements to the National Railroad Adjustment Board.[5] It does

[5] This argument is stated at page 15 of respondent's brief to the Court of Appeals to the effect that "if they (i.e. the employees) decide to progress claims beyond the property they must go to the Adjustment Board rather than strike." Respondent was compelled to make this argument since Section 3, First (i) provides that employees "may" submit disputes to the Adjustment Board, while Section 3, First (p) also provides that employees "may" file suit on their cause in an appropriate District Court. If the former provision does not require a submission by employees, it is difficult to justify such a requirement in the language of Section 3, First (p).

so in the following statement: (Appendix C, *infra*, p. 19a)

> "In Brotherhood of Railroad Trainmen v. Chicago River & Ind. R. R., supra, the Court reviewed the legislative history of the Act, and held that the 1934 amendment was intended to provide for compulsory arbitration in minor disputes so that a strike by employees could be enjoined for failure to submit to arbitration in accordance with the Act."

While it is true that this Court's opinion in the *Chicago River* case does use the phrase "compulsory arbitration" in reference to Section 3 (page 39), such opinion states that the ultimate question before the Court was "whether a railway labor organization can resort to a strike over matters *pending* before the Adjustment Board."[6] (page 31). It is thus clear that this Court did not in the *Chicago River* case hold that employees were required to submit their grievances to the National Railroad Adjustment Board, but only that once these grievances were submitted by either side so that Board jurisdiction attached, such jurisdiction cannot be defeated by a strike. The *Manion* case eliminates any argument to the contrary.

The clarification of the relationship of the *Manion* and *Chicago River* decision to the type of situation here involved calls for the review by this Court of the decision of the Court of Appeals.

The decision below is also contrary to the views expressed by this Court in *General Committee B.L.E. v. Missouri-K-T R. Co.*, 320 U.S. 323 (1943), in which the Court specifically interpreted the administrative

[6] Emphasis supplied.

machinery provided by Section 3 of the statute plus the statutory commands and prohibitions as simply supplementing the procedures of negotiation and self-help with specific legal sanctions. This interpretation of the effect of Section 3 is set forth at page 331 of the Court's opinion and reads as follows:

> "Moreover, administrative machinery was provided for the adjudication of certain controversies. Congress established the National Railroad Adjustment Board for the settlement of specific types of disputes or grievances between employees and the carrier. § 3, 45 USCA § 153, 10A FCA title 45, § 153. And Congress gave the courts jurisdiction to entertain suits based on the awards of the Adjustment Board. § 3, First, (p). That feature of the Act, as well as § 2, Ninth which placed on the Mediation Board definite adjudicatory functions, transferred labor problems from the realm of conciliation and mediation to tribunals of the law. *The new administrative machinery plus the statutory commands and prohibitions marked a great advance in supplementing negotiation and self-help with specific legal sanctions in enforcement of the Congressional policy.*" (Emphasis supplied)

It would be difficult to find a judical statement which more clearly sets forth the fact that Section 3, First (p) of the Railway Labor Act does not exclude employees from employing self-help to obtain redress for carrier violations of contracts but merely provides a legal sanction to supplement such self-help. The Court of Appeals decision does not mention the *M-K-T* case.

b. Norris-LaGuardia Act

The decision of the Court of Appeals conflicts with the decision of this Court in *Brotherhood of Railroad Trainmen* v. *Toledo, Peoria & Western Railroad*, 321 U.S. 50 (1944). In that case this Court held that Section 8 of the Norris-LaGuardia Act prohibited injunctive relief to a railroad which had discharged all of its legal obligations under the Railway Labor Act, but had not exhausted every reasonable effort to settle a dispute by available machinery (arbitration), even though the carrier was otherwise entitled to enjoin the conduct there involved. The District Court rejected the application of the *Toledo, Peoria & Western* decision to the present case on the ground that the procedures provided by the statute were exhausted by the Adjustment Board decisions. (Appendix B, *infra*, p. 13a) The Court of Appeals did not mention the decision.

It is submitted that a carrier which refuses to abide by an Adjustment Board decision has not met the requirements of Section 8, as spelled out in the *Toledo, Peoria & Western* decision. Petitioners can perceive no difference in the application of Section 8 between a carrier exercising a legal right to refuse to arbitrate a dispute and a carrier exercising a claimed legal right to refuse to abide by a decision in a dispute after submission of the dispute to the "compulsory arbitration" provisions of Section 3. The objection in each case is that the carrier's conduct has prevented a settlement of the dispute.

It is further submitted that this problem was not present in the *Chicago River* situation where the carrier had submitted the dispute to the Adjustment Board and the matter was pending before that Board.

Even if respondent's refusal to abide by the Adjustment Board decisions is not sufficient standing alone to disqualify it for injunctive relief under the *Toledo, Peoria & Western* decision, the railroad's action in thereafter relying on a claimed legal right and failing to make any effort to negotiate a settlement clearly brings it within the ambit of such decision.

3. The Decision of the Court of Appeals Is Contrary to the Plain Language of Both the Railway Labor Act and the Norris-LaGuardia Act.

a. Railway Labor Act

The plain language of Section 3, First (p) does not require employees to bring a suit in a Federal Court in cases where a railroad has refused to abide by an Adjustment Board decision. It only provides that employees "may" bring such a suit in that situation. The Court of Appeals decision is contrary to this plain language. It says that Section 3, First (p) is a substitute for the employees' common law right to strike and that the employee must bring such a suit or lose his right under the contract.

In the *Chicago River* case this Court stated (page 35) that the language of Section 3, First of the Railway Labor Act "should be literally applied in the absence of a clear showing of a contrary or qualified intention of Congress." In so speaking, the Court was referring to the language of Section 3, First (i) which provides that either party "may" submit a grievance or dispute concerning the interpretation or application of a collective bargaining agreement to the National Railroad Adjustment Board. In the *Manion* case decided two weeks later this Court applied the principle to the same statutory language and held in substance that it was permissive only.

The literal language of Section 3, First (p) (Appendix A, *infra*, p. 3a) likewise only provides that an employee "may" petition a District Court with respect to the causes for which he claims relief if a carrier refuses to abide by a decision of a National Railroad Adjustment Board. The application of the principle set forth by the Court in the *Chicago River* case for testing the meaning of the language of Section 3, First results in the conclusion that subsection (p) is permissive only and does not bar the common law right to strike which the employee has in the absence of statutory limitations. Such is the literal language of the subsection and there is no clear showing of a contrary intention of Congress.

Such a contrary intent cannot be derived from the fact that subsection (p), unlike subsection (i), gives the permissive right only to the employee. This intentional omission simply means that Congress did not give the carriers a right to judicial review of Adjustment Board decisions.

Nor can such a contrary intent be found in the legislative history of Section 3. The District Court made no mention of legislative history in its opinion (Appendix B, *infra*, p. 6a) The Court of Appeals referred to such history only in footnote 9 of its decision (Appendix C, *infra*, p. 20a) and then only as "set forth" in decisions of this Court, with particular emphasis upon the discussion in the *Chicago River* case.

In that case this Court reviewed such history (353 U.S. 35-39) and concluded that it was the understanding of both the opponents and supporters of Section 3 that it provided "compulsory arbitration in this lim-

ited field." These conclusions must be read in the context of and in support of the conclusions that this Court reached at 353 U.S. 34, quoted above at page 13, to the effect that the "unequivocal" language of Section 3, First (m) of the statute provides for a procedure to resolve disputes of the type here involved and makes Adjustment Board awards "final and binding upon both parties." In fact, the Court states at page 35 that the legislative history thereafter discussed "reinforces the literal interpretation of the Act." If, as respondent asserts, it is free to refuse to abide by Adjustment Board decisions, even the portion interpreting the contract,[7] then, of course, there can be no "compulsory arbitration." Such arbitration, as evidenced by Section 7-9 of the statute (45 U.S.C. Sections 157-159) contemplates awards "final and binding" on both parties subject only to impeachment on certain limited grounds.[8] It is submitted that it is inconsistent for the Court of Appeals to rely on the statement of this Court in the *Chicago River* decision with respect to the "compulsory arbitration" features of Section 3 and at the same time give no effect to this Court's statements in the same case that the "unequivocal" language of the statute makes Adjustment Board awards "final and binding on both parties." Under the Court of Appeals decision, Section 3 becomes "compulsory arbitration" only for the employees.

[7] The respondent has refused to correct the contract violations involved in Award 19372. (R. 44).

[8] Nor are the decisions of Courts of Appeals holding that in suits under Section 3, First (p) employees must try the grievance issue *de novo*, *B. P. Boos* v. *Railway Express Agency, Inc.*, 253 F. 2d 897 (8th Cir., 1958); *Thomas* v. *N. York, Chicago & St. Louis R. Co.*, 183 F. 2d 614, 618 (6th Cir., 1950) consistent with an arbitration concept.

Moreover, it is clear that this Court was not reviewing the history of Section 3 with the problem here involved in mind. Whatever may have been meant by those who described Section 3 in the Congressional hearings as something akin to arbitration the fact is that those same hearings clearly reveal that the drafters of the legislation did not know and in fact had not given any thought to the effect of the section with respect to strikes after Adjustment Board decisions are rendered. There was considerable discussion in the House hearings (pages 58-64)[9] on the right of an employee to strike after losing an Adjustment Board case. There was none in such hearings on the issue of such a right after the employee wins before the Adjustment Board although respondent, while conceding this to be generally true, has sought to construct a limited discussion out of isolated statements. Neither the District Court or the Court of Appeals has relied on these statements.

In any event, the following discussion at pages 63 and 64 of the House hearings, between Messrs. Wolverton and Federal Coordinator Eastman shows clearly that the drafters of the legislation had given no thought to the problem here involved:

> "Commissioner Eastman. I may say, so far as I am concerned, it had not seemed to me that matter was a contingency of importance, because I cannot conceive of organizations striking over the settlement of grievances, particularly when they had been passed upon by an impartial tribunal under Government auspices.
>
> "It is a serious enough thing to strike when a major matter is involved; but when your have only

[9] Hearings on H. R. 7630, House Committee on Interstate and Foreign Commerce, 73rd Cong., 2nd Sess.

minor grievances and they have had full opportunity to be heard and have had their day in court before a tribunal, it hardly seemed to me that that was a question that was likely to arise. My own idea would be, let that question arise out of experience and find out whether there is actual need for any such power before you provide for issuing injunctions for preventing strikes.

"Mr. Wolverton. Mr. Commissioner, that may be true. Maybe that is a proper course to pursue, but what I am seeking to find out is whether this language declares something else to be the policy.

"Commissioner Eastman. Yes.

"Mr. Wolverton. And, I am endeavoring to find out just what the language of this bill does provide, so that we may know what policy we are adopting. It may be that a hands-off policy is what we should adopt, but in that case, I do not want to see something in the bill that carries a different effect. That is the purpose of my questions, in trying to find out definitely what is the purpose or effect of the provisions of this bill.

"Commissioner Eastman. I shall be glad to give the matter study and let you know just what my opinion is upon it."

The legislative history contains no subsequent opinion by Mr. Eastman on the subject.

Neither the Senate hearings[10] nor the Committee reports[11] contain any mention of the subject.

[10] Hearings on S. 3266, Senate Committee on Interstate and Foreign Commerce, 73rd Cong., 2nd Sess.

[11] Report No. 1944, House of Representatives, 73rd Cong., 2nd Sess., June 11, 1934; Report No. 1065, Senate, 73rd Cong., 2nd Sess., May 21, 1934.

This legislative history does not furnish the "clear showing" which this Court stated in the *Chicago River* decision (353 U.S. 35) is necessary to override the literal language of Section 3, First (p).

b. Norris-LaGuardia Act

The clear language of Section 4 of the Norris-LaGuardia Act (29 U.S.C. Section 104) prohibits injunctions in labor disputes. No one has yet suggested that the dispute here involved is not a "labor dispute", as defined in Section 13(c) of that statute. The Court of Appeals decision (Appendix C, *infra*, p. 15a) does not mention Section 4 of such statute nor does it find "a plain violation of a basic command of the Railway Labor Act," the presence of which this Court stated is necessary to override the prohibitions of that section. *Railroad Telegraphers v. Chicago & N. W. R. Co.*, 362 U.S. 330, 338, 339 (1960).

Assuming *arguendo* that Section 4 does not prohibit the injunction here involved, Section 8 plainly does. That section specifically states that a complainant's duty extends beyond the discharge of mere legal obligations to settle a dispute. The dispute was settled by the "compulsory arbitration" machinery of Section 3, when the Adjustment Board handed down its decisions. Respondent had only to abide by such decisions. Whatever its legal right to refuse to do so, respondent's refusal disqualified it for injunctive relief by the plain language of Section 8.

Assuming further that this action alone was not sufficient to bring Section 8 into play, the further failure of respondent to negotiate a settlement and its stand

upon a claimed bare legal right is certainly contrary to the plain language of the section.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted

WAYLAND K. SULLIVAN,
General Counsel
Brotherhood of Railroad Trainmen
1370 Ontario Street
Cleveland 13, Ohio

JAMES L. HIGHSAW, JR.
620 Tower Building
Washington 5, D.C.

Counsel for Petitioners
Brotherhood of Railroad Trainmen, et al.

Of Counsel:

PHILIP HORNBEIN, JR.
614 Symes Building
Denver 2, Colorado